THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION Nos. 32276 AND 35995 OF 1998

Dated 03-10-1998

W.P.NO.32276 of 1998

A. Ranga Mohana Rao.

..Pettiioner.

And

Chairman-cum-Presiding Officer, Industrial Tribunal-cum-Labour Court, Anantapur and another.

..Respondents.

W.P.No. 35995 of 1998

The Management of Avanthi Leathers Ltd., factory situated at Avanti (Near) Varadaiahpalem, Satyaveed (Mandal, Chittoor District, represented by its director Mr. K. Ajay Kumar.

..Petitioner.

And

The Presiding Officer, Industrial Tribunal-cum-Labour Court, Ananthapur and another.

..Respondents.

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION Nos. 32276 AND 35995 OF 1998

COMMON ORDER:

W.P.No.32276 of 1998 is filed by the petitioner-workman challenging the award of the Industrial Tribunal-cum-Labour Court, Anantapur, in I.D.No.233 of 1995, dated 27-07-1998, to the extent he was denied back wages. W.P.No.35995 of 1998 is filed by the employer against the very same award in so far as the Tribunal had directed reinstatement, with continuity of service, of the workman. The parties shall hereinafter be referred to as they are arrayed in W.P.No.32276 of 1998.

The facts, to the extent necessary for this writ petition, are that the petitioner was appointed as a Leather Technician in the factory of the second respondent from 28-3-1983 and as a permanent employee, with effect from 18-4-1984. A criminal complaint, in Crime No.31 of 1992, was lodged, against the petitioner, in the Varadaiahpalem Police Station alleging that he was responsible for theft of leather samples. A charge sheet, in C.C.No.96 of 1992, was filed before the Judicial First class Magistrate, Sathyavedu, under Section 381 IPC, and the said criminal case was dismissed by judgment dated 29-4-1995.

In the meanwhile a charge memo was issued to the petitioner on 13-8-1992 alleging theft of leather samples kept in the factory of the second respondent for being exhibited to foreign and other customers. The petitioner was also charged with unauthorized absence beyond 18-07-1992. In the enquiry held on 13-12-1992, Sri B. Seshagiri Rao, General Manager (Technical), was examined as M.W.1, Sri A. Ekambaram, Village Administrative Officer, Varadaiahpalem, was examined as M.W.2 and Sri P. Munisekhara Reddy, Time Keeper, was examined as M.W.3. Since the petitioner chose not to cross-examine the management witnesses, the evidence of the petitioner was recorded and he was cross-examined by the second respondent-Management. The Enquiry Officer, in his report, dated 25-12-1992, held that the charges levelled against the petitioner, vide charge memo dated 13-8-1992, were proved beyond reasonable doubt. The Disciplinary Authority, concurred with the findings of the Enquiry Officer and upon considering the past record of the petitioner, and on finding that there were no extenuating circumstances to take a lenient view in the matter, dismissed the petitioner from service vide proceedings dated 25-1-1993. Subsequently the Criminal Case in C.C.No.96 of 1997 came to be dismissed on 29-4-1995. After he was acquitted in the criminal case, the petitioner filed an application under Section 2(A)(2) of the Industrial Dispute Act, (for short 'the Act'), before the Industrial Tribunal-cum-Labour Court, Anantapur in I.D.No.233 of

1995.

The Tribunal held though the witnesses, examined in the domestic enquiry and the criminal case were the same, their evidence contradicted to each other. M.W.1, in his deposition, stated that he had filed a complaint before the Sub-Inspector of Police, Varadaiahpalem, on 18-7-1992 and that he suspected the petitioner, who was the supervisor of the factory, to be involved in the theft since he was on leave from 01-07-1992 to 08-07-1992 and was unauthorisedly absent from duty from 9-7-1992 onwards. The stolen leather samples, on recovery, were identified by the General Manager, who, however, did not state anything against the petitioner. The leather samples were recovered from Mr. Gopal, a shoe shopkeeper at Srikalahasthi, who was not examined in the domestic enquiry. M.W.1 deposed that the Sub-Inspector of Police had informed him that when they reached Kalahasthi, he saw the charge sheeted employee i.e., petitioner and that the petitioner admitted that he had committed theft of the leather samples and had sold them to M/s. Sri Krishna Shoes of Srikalahasti. A Mahajarnama is said to have been written with the help of the jeep driver after the Sub-Inspector of Police arrested the petitioner. The said jeep driver was also not examined in the domestic enquiry. The Tribunal held that the finding, against the petitioner, in such enquiries were not tenable. Further, the criminal case filed against the petitioner in C.C.No.96 of 1992, had ended in acquittal. With regards the second charge of unauthorized absence, the Tribunal held that while leave had been sanctioned from 1-7-1992 to 8-7-1992 and though the petitioner had submitted another leave letter on 31-7-1992 extending his leave upto 17-8-1992, for which, the second respondent had sent a letter on 18-8-1992, under registered post acknowledgment due, intimating the petitioner that his leave was refused, the said letter was returned, since the petitioner was absent for seven days at his address. In his defence the petitioner stated that as his father was sick, he had gone to Hyderabad to attend his father's treatment and since he was under heavy strain and mental agony, he fell ill and had therefore again applied for leave from 9-7-1992 to 31-7-1992 on medical grounds and had applied for further leave upto 17-8-1992, which was further extended from 18-8-1992 to 13-9-1992. This request was rejected by the respondent as the petitioner had not submitted any medical certificate for the period he had sought for sanction of leave on the ground of ill health. The Tribunal held this charge, of the workman having absented himself, was proved. Since the first charge was held not to have been established and since

the second charge, for unauthorized absence, was held proved, the Tribunal directed the second respondent to reinstate the petitioner into service with continuity of service, but without back wages.

Since the challenge to the award, in I.D.No.233 of 1995, dated 27-7-1998, in W.P.No.32276 of 1998 filed by the petitioner is limited to denial of back wages and since the Tribunal had directed reinstatement of the petitioner with continuity of service, which part of the award is the subject matter of challenge in W.P.No.35995 of 1998, filed by the second respondent-Management, it is necessary that the contentions of Sri M. Radha Krishna Murthy, learned counsel for the second respondent, be examined first.

Sri M. Radha Krishna Murthy, learned counsel for the second respondent would submit that strict rules of Evidence Act are not applicable and that even hearsay evidence is permissible in domestic enquiries. Learned counsel places reliance on STATE OF HARYANA V. RATTAN SINGH; and MANAGING DIRECTOR, KSRTC, BANGALORE V. S. NAGARAJ, in this regard. Learned counsel would submit that when the statements of witnesses, recorded under Section 161 Cr.P.C., are read out in the domestic enquiry and the workman does not cross-examine these witnesses, their evidence is required to be accepted, and would rely on STATE BANK OF BIKANER & JAIPUR V. SRINATH GUPTA in this regard. In support of his submission that the nature and scope of disciplinary proceedings differ from that of criminal proceedings and that acquittal in a criminal case would not have any bearing on the disciplinary proceedings, learned counsel would rely on NELSON MOTIS V. UNION OF INDIA. In support of his submission that punishment imposed by the employer ought not to be interfered with by the Industrial Tribunal, in exercise of its jurisdiction under Section 11-A of the Industrial Disputes Act, he would rely on DEVENDER SWAMY V. KARNATAKA STATE ROAD TRANSPORT CORPORATION and RUSTON AND HORNSBY V. T.B. KADAM. In support of his submission that termination of an employee, who holds an office of trust, is an expression of loss of confidence by the employer and in cases involving loss of confidence, Tribunal should be slow to direct reinstatement of such an employee, and that compensation could be awarded in lieu of reinstatement, learned counsel would rely on M/s. FRANCIS KLEIN & COMPANY PRIVATE LIMITED V. THE WORKMEN and KANHAIYALAL AGRAWAL V. FACTORY MANAGER, GWALIOR SUGAR COMPANY LTD.

Sri M. Radha Krishna Murthy, learned counsel for the second respondent, would submit that though the award reflects as if no document was marked either by the Management or by the workman, the very fact that the evidence adduced in the domestic enquiry was referred to by the Tribunal would lead to an inference that the validity of the domestic enquiry had been upheld and as a consequence thereof, the entire domestic enquiry proceedings and the enquiry report would constitute material on record, which the Tribunal is required to consider, while exercising its jurisdiction under Section 11-A of the Act and in re-appreciating the evidence on record. Learned counsel would submit that though the judgment in C.C.No.96 of 1992 was not marked by the petitioner nor was it adduced as evidence, the Tribunal had chosen to place reliance on the judgment of the criminal Court. Learned counsel would submit that the findings of the Tribunal, placing reliance on the judgment of the criminal Court, are required to be eschewed, as perverse, and to this extent the award would require correction in certiorari proceedings under Article 226 of the Constitution of India.

On behalf of Sri K. Srinivas, learned counsel for the petitioner, Sri A.T.M. Rangaramanujam, learned senior counsel, would contend that the petitioner had been acquitted in the criminal case on the self same charges. Learned senior counsel would submit that the criminal court, had severely criticized the manner in which the matter was investigated and had found fault with the prosecution in chargesheeting the workman. Learned senior counsel would submit that the judgment of the criminal court would, in effect, amount to strictures being passed against the prosecution for needlessly involving an innocent person. Learned senior counsel would contend that since the petitioner has been acquitted in the criminal case, he is required to be reinstated into service with full back wages and there was no justification for the Tribunal to deny back wages. Learned senior counsel would also contend that no person can be punished on mere surmises and conjectures and in the absence of any evidence to establish that the petitioner had indulged in theft of leather samples, the petitioner could not have been held guilty of the serious charge of theft. With regards the second charge, which, the Tribunal held as proved, learned senior counsel would submit that the petitioner had submitted his leave application even if it was after having availed leave. In the circumstances, wherein the petitioner's father was seriously ill, the very submission of leave application would mean that the petitioner was not unauthorisedly absent from duty. Learned

senior counsel would submit that in any event, denial of back wages for the minor misconduct of absence from duty for a period of just over a month, is unjust and harsh and the petitioner should therefore, be given the relief of payment of back wages also.

As submitted by Sri M. Radha Krishna Murthy, learned counsel for the second respondent, the award of the Tribunal does not disclose the source from which the enquiry report or the enquiry proceedings or the judgment of the criminal Court, were taken on record. If no witnesses were examined and no documents were marked on either side, it is beyond comprehension as to how the enquiry report or the proceedings in the domestic enquiry or the judgment of the criminal Court were placed before the Tribunal. Be that as it may, without going into the question as to the manner in which the material was placed before the Tribunal, the award of the tribunal is required to be examined.

It is no doubt true that the degree of proof required in departmental proceedings is preponderance of probabilities and, unlike criminal proceedings, is not proof beyond reasonable doubt. It is also well settled that the strict rules of the Evidence Act do not apply to departmental enquiries and even hearsay evidence is permissible. The law laid down in this regard in RATTAN SINGH (1 supra) NAGRAJ (2 supra) and NELSON MOTIS (4 supra) relating to the nature and scope of departmental enquiries, would, undoubtedly, support the submission of Sri M. Radha Krishna Murthy. The fact, however, remains that the jurisdiction of this Court in certiorari proceedings under Article 226 of the Constitution of India, against the award of the Industrial Tribunal-cum-Labour Court is limited. Section 11-A of the Act confers powers on Labour Court/Industrial Tribunal to re-appreciate the evidence, akin to a court of appeal, and on the very same evidence to arrive at a conclusion different from the one reached by the employer. This Court, in certiorari proceedings under Article 226 of the Constitution of India, does not sit in an appeal over the findings of fact recorded by the Tribunal nor does it re-appreciate such findings or substitute its views for that of the Labour Court/Tribunal. It is only if a finding of fact, of the Labour Court, is either perverse or is based on no evidence, would this Court, while exercising its certiorari jurisdiction under Article 226 of the Constitution of India, interfere. It is true that hearsay evidence is permissible in departmental enquiries, but that does not enable the employer to impose punishment on a workman on mere

suspicion or on surmises and conjecturers. The Sub-Inspector of Police, who conducted the investigation, was not examined in the departmental enquiry. The Labour Court also took note of the fact that the person from whom the stolen property was recovered, Mr. Gopal, a shoe shopkeeper, was also not examined. The Labour Court also took note of the fact that the jeep driver, who had signed the mahajarnama, was also not examined. The Tribunal, thus, came to the conclusion that inference drawn by the Enquiry Officer, while recording his findings against the petitioner, was not tenable. Can it be said that exercise of jurisdiction by the Tribunal, under Section 11-A of the Act, is either perverse or is based on no evidence? The answer has necessarily to be in the negative. Once it is held that the findings of the Tribunal are neither perverse nor is it based on no evidence, this Court would not sit in further judgment over such findings of fact recorded by the Industrial Tribunal.

Sri M. Radha Krishna Murthy would refer to SRINATH GUPTA (3 supra) to submit that the punishment of dismissal imposed on the workman was upheld by the Tribunal and in the writ petition filed before the Rajasthan High Court the award of the Tribunal was quashed and the workman was directed to be reinstated with 50% back wages holding that the statements, which had been recorded under Section 161 Cr.P.C., were not admissible in evidence and therefore the decision of the Tribunal is vitiated. This order of the Rajasthan High Court was reversed by the Supreme Court. In SRINATH GUPTA (3 supra), the witness, whose statements had been recorded earlier under Section 161 Cr.P.C., were produced before the Enquiry Officer and the earlier statement recorded by the CBI Inspector was read over to him by the Bank representative, the witness admitted the contents of the statement and he was thereafter cross-examined by the defence. In SRINATH GUPTA (3 supra), the Supreme Court, after taking note of the earlier judgment in RATTAN SINGH (1 supra) held as under:

> “The statements under Section 161 Cr.P.C. may not be admissible in the criminal trial, but the said statements can be produced in a disciplinary inquiry like the present. The person who made the statement has been examined before the inquiry officer. It was open to the witness to have stated orally the entire contents of what was recorded in his statement under Section 161 Cr.P.C. Instead of following this time consuming procedure, the said statement recorded under Section 161 Cr.P.C. was read over to the witness who admitted the contents thereof. In this way the earlier statement under Section 161 Cr.P.C., became a part of the

> examination-in-chief of the witness before the Inquiry Officer. It is not in dispute that the said statements had been given to the respondent in advance and full opportunity was granted to the respondent to cross-examine the said witnesses. This being the case, it is difficult to appreciate as to how the High Court could have come to the conclusion that the inquiry proceedings stood vitiated".

Sri M. Radha Krishna Murthy, learned counsel for the second respondent, would submit that the charge sheet in C.C.No.96 of 1992, which was marked as Ex.M3 in the departmental enquiry, clearly refers to the confession of the petitioner and his admission that he was responsible for the theft of leather samples. Learned counsel would seek to equate the charge sheet filed in C.C.No.96 of 1992 to the Section 161 Cr.P.C. statement referred to in SRINATH GUPTHA (3 supra). As noted above in SRINATH GUPTHA(3 supra), the witnesses, who had earlier given their statements, under Section 161 Cr.P.C. to the CBI Inspector, were present in the domestic enquiry. Their statements were read over to them and upon admitting that they had given such statements in the domestic enquiry, they were subjected to cross-examination. In the case on hand, however, the charge sheet, which is said to contain the admission of guilt of the petitioner, ended in his acquittal in the criminal case. While the said charge sheet was marked as an exhibit in the domestic enquiry, it is nobody's case that on being confronted with the charge sheet, the petitioner had admitted his guilt in the domestic enquiry. While strict rules of evidence would undoubtedly not apply to domestic enquiries and even, hearsay evidence would be admissible, no employee can be held guilty of misconduct on mere surmises and conjecturers or on mere suspicion, for it is well settled that suspicion is not proof of guilt. Unlike, SRINATH GUPTHA(3 supra) where the High court had quashed the award of the Tribunal and the Supreme Court, while setting aside the judgment of the High Court, had upheld the award of the Industrial Tribunal, the question which arises for consideration herein is as to whether the award of the Industrial Tribunal calls for interference. As already held, while the Tribunal has the power, under Section 11-A of the Industrial Disputes Act, to re-appreciate the evidence on record, this Court in certiorari proceedings would normally not do so and since the finding of the Tribunal in favour of the petitioner, in so far as charge No.1 is concerned, is neither perverse nor is based on no evidence, no interference is called for from this Court.

Sri M. Radha Krishna Murthy, learned counsel for the second respondent, would

contend that proceedings before the criminal Court differ from departmental proceedings and that no reliance ought to have been placed by the Tribunal on the finding recorded in the criminal case. Mere acquittal in a criminal case would not automatically result in the petitioner being acquitted in the departmental enquiry also. However, the judgment of the criminal Court, as has been held in SK. AHMED V. LABOUR COURT, GUNTUR, is also one of the factors, required to be taken into consideration by the Tribunal while adjudicating an industrial dispute. Reliance placed by the Tribunal on the judgment of the criminal Court would therefore, not call for any interference.

In so far as the second charge is concerned, the Tribunal held the petitioner guilty of misconduct, of unauthorized absence for a period in excess of one month. As a measure of punishment, the Tribunal has chosen to deny back wages to the workman for the charge held proved. Denial of back wages as a measure of punishment, in substitution of the punishment of dismissal imposed by the second respondent for unauthorized absence of a period just in excess of one month, cannot be said to be a punishment, which the Tribunal could not have imposed at all or one which shocks the consistence of this Court. The punishment as substituted by the Tribunal, does not call for any interference.

Now W.P.No.32276 of 1998 filed by the petitioner Sri A.T.M. Rangaramanujam, learned senior counsel, would contend that the very acquittal of the petitioner in the criminal case would necessarily require him to be reinstated into service, with full back wages and continuity of service.

I am afraid I cannot agree. It is well settled that mere acquittal in a criminal case would not automatically result in workman being absolved of the same charge in a departmental enquiry also. As rightly pointed out by Sri M. Radha Krishna Murthy, learned counsel for the second respondent, departmental enquiry proceedings are distinct from criminal proceedings. The judgment of a criminal Court is one of the factors, which the Tribunal has to take into consideration while determining the guilt or otherwise of the workman concerned. In the case on hand, the Tribunal, after taking into consideration the judgment of the criminal Court, held that charge No.1 levelled against the petitioner was not proved. The second charge of unauthorized absence, which was held as proved by the Tribunal, was not the subject matter of C.C.No.96 of 1992, in which, the petitioner was acquitted.

That leaves us with the contention, urged by Sri M. Radha Krishna Murthy, learned counsel for the second respondent, that even if it is held that the charge No.1 levelled against the petitioner was not established and that the finding of the Tribunal in this regard is justified, the further question which would require examination by this Court is when there are strong reasons to suspect the involvement of the petitioner in the theft of leather samples, it would be a case where the second respondent can be said to have lost confidence in the petitioner. In FRANCIS KLEIN & COMPANY PRIVATE LIMITED (7 supra) and KANHAIYALAL AGRAWAL (8 supra) the Supreme Court held that where the position held by a workman is one of trust and his services were terminated for loss of confidence, the order of termination should normally be sustained and instead of reinstatement, compensation should be awarded.

While this submission of Sri M. Radha Krishna Murthy, learned counsel for the second respondent, cannot be said to be without merit, the fact remains that no such plea was taken by the second respondent before the Tribunal. This court would, normally, not examine a question, which has neither been urged nor argued before the Industrial Tribunal. The plea of loss of confidence, taken for the first time before this Court, has therefore be rejected.

In the result, both the writ petitions filed by the petitioner-workman and the employer-second respondent fail and are, accordingly, dismissed. There shall, however, be no order as to costs.

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03-10-2005

SJ